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HIGH COURT OF CHHATTISGARH, BILASPUR

M.A (C) No. 1293 of 2014

{Arising out of Award dated 29.03.2014 passed in Claim Case No. 10 of 2012 by the 4th Additional Motor Accident Claims Tribunal, Raipur, Chhattisgarh}

1. Smt. Kiran Khandelwal W/o Shri Kishore Khandelwal, aged about 45 years

   (Mother of deceased Late Shri Bhavesh Khandelwal)

2. Kumari Karuna Khandelwal, D/o Shri Kishore Khandelwal, Aged about 22 years.

   (Sister of deceased Late Shri Bhawesh Khandelwal, wrongly mentioned as Mother of deceased Late Shri Bhawesh Khandelwal in the impugned order)

3. Kishore Khandelwal S/o Late Shri Gyarshi Khandelwal, Aged about 51 years.

   (Father of deceased Late Shri Bhawesh Khandelwal, wrongly mentioned as Mother of deceased Late Shri Bhawesh Khandelwal in the impugned order)

   All are resident of D-386, Samta Colony, Raipur, District Raipur, Chhattisgarh.

---- Appellants

Versus

1. Shri Ashok Nishad S/o Shri Baliram Nishad, resident of village Khaira, Thana Devri, District Durg, Chhattisgarh.

   (Driver of vehicle bearing registration No. CG 04 E 1261)

   (Deleted)

2. Shri Mohhamad Anis S/ Shri Haji Mohhamad Rafiq, resident of Bharat Travels, Bus Stand, Rajnandgaon, District Rajnandgaon, Chhatisgarh.

   (Owner of vehicle bearing registration No. CG 04 E 1261)

3. The New India Insurance Company Limited, First Floor, Madina Building (wrongly mentioned as Madira Building in the impugned order) Kachhari Chowk, Raipur, Chhattisgarh, Through Divisional Manager.

   (Insurer of vehicle bearing registration No CG 04 E 1261)

---- Respondents

For Appellant/Claimants	:	Shri Vinay Pandey, Advocate.
For Respondents No. 2	:	Shri Shashibhushan Tiwari Advocate.
For Respondent No. 3	:	Shri Anil Gulati, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per P.R. Ramachandra Menon, Chief Justice

09.10.2020

1. Appeal is at the instance of the Claimants for enhancement of the compensation.

2. The claim relates to the death of a person aged about 21 years who met with an accident on 12.02.2011. The deceased by name Bhawesh Khandelwal was travelling as a passenger in a Mini-bus bearing registration No. CG-04-E-1261, owned by the 2nd Respondent and insured by the 3rd Respondent. The vehicle was being driven by the 1st Respondent in the proceedings before the Tribunal (who, during pendency of the appeal took his last breath; pursuant to which the name came to be deleted from the party array as per order dated 07.10.2015 in IA No. 2). While so, because of the negligence on the part of the Driver of the Mini-bus, the deceased fell down from the door of the vehicle and sustained fatal injuries leading to his death. This was sought to be compensated by filing claim petition before the Tribunal by the parents and sister of the deceased. Existence of a valid insurance policy was admitted. Based on the pleadings and evidence brought on record, the Tribunal rendered a finding that the accident was solely because of the negligence on the part of the Driver of the Mini-bus.

3. With regard to the payment of compensation, in view of the fact that the income of the deceased was not properly proved, the Tribunal reckoned only Rs. 3,000/- as the notional monthly income. Deducting 50%

towards the personal expenses, the deceased being a bachelor, and adopting a multiplier of '17', the loss of dependency was worked as Rs. 3,06,000/-. A further sum of Rs. 2,500/- each was awarded under the heads 'funeral expenses' and 'loss of estate' and a sum of Rs. 2,000/- towards 'loss of love and affection', thus granting a total compensation of Rs. 3,13,000/- which was directed to be satisfied with interest at the rate of 6% per annum from the date of the claim petition till satisfaction. In view of the existence of valid insurance policy, the amount due was directed to be satisfied by the 3rd Respondent-Insurance Company. As mentioned already, inadequacy of the compensation made the Claimants to approach this Court by filing the appeal.

4. The learned counsel for the Appellants points out that the fixation of the notional monthly income is quite on the lower side and there is a mistake in reckoning the appropriate multiplier as well. It is also pointed out that the amounts awarded under the conventional heads are not in conformity with the law declared by the Apex Court. It is further pointed out that the future prospects have also not been taken care of by the Tribunal.

5. Admittedly, the accident was in the year 2011. No much exploration is necessary to hold that an able-bodied youth as the deceased would have earned much more than the amount fixed by the Tribunal as notional income even if he was engaged as manual labourer. In the said circumstances, we find it appropriate to re-fix the notional monthly income as Rs. 4000/- instead of Rs. 3000/- fixed by the Tribunal. As per the law declared by the Apex Court in ***Sarla Verma & Others v. Delhi Transport Corporation & Another***; {(2009) 6 SCC 121}, which stands affirmed by the Constitution Bench in ***National Insurance Company Ltd. v. Pranay Sethi***; {(2017) 16 SCC 680}, in the case of a person aged less than 40 years with no fixed income, future prospects have to be reckoned by adding 40% of the income reckoned for the purpose. In the said circumstance, the monthly income becomes

Rs.4000+(4000X40/100) = Rs.5,600/-. The deceased was aged about 21 years. This being the position, the appropriate multiplier, going by the above rulings, is '18' and not '17'. On re-working the compensation for loss of dependency, it comes to Rs.5600X12X50/100X18= Rs.6,04,800/-. Since the Tribunal has awarded only a sum of Rs.3,06,000/- towards the 'loss of dependency', the balance amount payable under this head comes to **Rs.2,98,800/-**.

6. It has been held by the Apex Court in the decisions cited supra that the compensation under the 'funeral expenses' and 'loss of estate' shall be at the rate of Rs.15,000/- each. The Tribunal has awarded only a sum of Rs.2500/- under each of these heads and as such, it requires to be topped up by awarding a further compensation of **Rs.12,500/-** towards the 'funeral expenses' and another sum of **Rs.12,500/-** towards the 'loss of estate'. It is awarded accordingly.

7. It is relevant to note that the term 'consortium' has been explained by the Apex Court in a subsequent decision rendered after ***Pranay Sethi's*** (*supra*) i.e. ***Magma General Insurance Co. Ltd v. Nanu Ram Alias Chuhru Ram;*** {(2018) 18 SCC 130} whereby it has been made clear that '**parental consortium**' is a compensation given to the children in respect of demise of the parents, '**spousal consortium**' to the living spouse because of the demise of the partner and the '**filial consortium**' payable to the parents on the demise of the children.

8. Since the deceased was a bachelor, there is no question of any spousal consortium. At the same time, by virtue of the above ruling, the parents are entitled to get 'filial consortium' as fixed by the Apex Court which comes to Rs. 40,000/-. After giving credit to the sum of Rs. 2000/- awarded by the Tribunal towards loss of love and affection, the balance payable comes to **Rs.38,000/-**. It is awarded accordingly. Thus, the total additional

compensation payable in respect of the accident involving the death of the person concerned comes to **Rs.3,61,800/-**. The said amount shall be satisfied with interest at the rate of 7% per annum from the date of claim petition till satisfaction. Since the liability has been mulcted upon the shoulders of the Insurance Company by virtue of the availability of a valid insurance policy, we direct the 3rd Respondent to deposit the amount due as above before the Tribunal with intimation to the Appellants/Claimants as expeditiously as possible at any rate within 'one month' from the date of receipt of a copy of this judgment.

9. The appeal stands allowed to the said extent.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE

Amit